IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Murlidhar Pande & Ors. v. The Joint Registrar, Cooperative Society, Ajmer & Anr.

S.B.CIVIL WRIT PETITION NO.695/1994
under Article 226 of the Constitution of India.

Date of Order : 9th February, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Rajesh Joshi, for the petitioners.
Mr. S.N.Tiwari, Dy.Govt.Advocate.

BY THE COURT :

By this petition for writ a challenge is given to the notice dated 17.12.1993 passed by Joint Registrar, Cooperative Society, Ajmer Division, Ajmer under Section 74(1) of the Rajasthan Cooperative Societies Act, 1965 (hereinafter referred to as "the Act of 1965"). The notice under Section 74(1) of the Act of 1965 was issued for alleged misappropriation from the property and funds of the society. The allegations as averred in notice dated 17.12.1993 are as follows:-

"1- {1} बोर्ड भंग होने पर रिट याचिका पर व्यय की राशि जो औचित्य पूर्ण नहीं होने से संचालक मण्डल से प्रश्नाक 60{4} 21000-00
सामुहिक रूप से वसूली योग्य है ।

{2} रिटायर्ड अधिकारियों के वेतन वृद्धि दी गई जो युक्ति सगत नहीं है 12000-00
संचालक मण्डल द्वारा एवं वेतन वृद्धि सम्बधित नियम नहीं । प्रश्नांक 60{5}

2- श्री बंशीलाल दरगडा भू.पू. प्रबन्ध संचालक गलत वेतन वृद्धियों की राशि एवं मंहगाई 3401-00 भत्ता प्रशनांक 12"

The allegation No.1 pertains that the money spent by the society for filing writ petition to challenge the order, whereby the board of the society was dissolved. The second allegation is that enhancement of pay of retired officers was not rational and the third allegation pertains to grant of certain annual grade increments and dearness allowances to Shri Bansilal Dargad.

Counsel for the petitioners at the outset stated that so far as the allegations No.2 and 3 are concerned, they were subject matter of an another writ petition bearing No.5646/91, Bhilwara Urban Cooperative Bank Ltd., Bhilwara v. State of Rajasthan & Ors., which was decided by this Court by order dated 4.4.1994. In the said writ petition the order, whereby the resolution for grant of higher pay scales to retired employees and for grant of increments and dearness allowances to Shri Bansilal Dargad was rescind, was under challenge and the same was held invalid by the Court by the judgment dated 4.4.1994. Consequentially the resolutions taken by the society relating to which allegations No.2 and 3 pertains hold field. This fact has not been disputed by the counsel for the respondents. In light of it the allegations No.2 and 3 cannot be

treated as misappropriation from the funds of the society.

With regard to allegation No.1, counsel for the petitioners has stated that the amount of Rs.21,000/- was paid to the counsel for the society who represented society before the High court in a writ petition preferred by the bank. The amount paid to an advocate against remuneration cannot be treated misappropriation in the funds of the society.

The contention of the counsel for the petitioners is that initiation of proceedings under Section 74(1) of the Act of 1965 itself is illegal as the ingredients necessitating to initiate proceedings under Section 74(1) of the Act of 1965 are not available. Sub-section (1) of Section 74 of the Act of 1965 reads as under:-

> "74.Surcharge.-(1) If in the course of an audit, inquiry, inspection or the winding up of a co-operative society, it is found that any person, who has taken any part in the organisation or management of such society or who is or has at any time been an officer or an employee of the society, has made any payment contrary to this Act, the rules or the bye-laws or has caused any deficiency in the assets of the society by breach of trust or wilful negligence or has misappropriated or fraudulently retained any money or other property belonging to such society, the Registrar may, of his own motion or on the application of the committee, liquidator or any creditor, inquire himself or direct any person authorised by him by an order in writing in this behalf, to

> inquire into the conduct of such person:
>
> Provided that no such inquiry shall be held after the expiry of six years from the date of any act or omission referred to in this sub-section [or as the case may be, from the date of knowledge of the Registrar of such act or omission, whichever is later]."

According to sub-section (1) of Section 74 of the Act of 1965, if it is found that any person, who has taken any part in the organisation or management of society or who is or has at any time been an officer or an employee of the society, has made any payment contrary to this Act, rules or bye-laws or has caused any deficiency in the assets of the society by breach of trust or wilful negligence or has misappropriated or fraudulently retained any money or other property belonging to the society, the Registrar may, of his own motion or on the application of the committee, liquidator or any creditor, inquire himself or direct any person authorised by him by an order in writing in this behalf, to inquire into the conduct of such person.

In the present case from reading of allegations itself it reveals that there was no breach of trust or willful negligence or misappropriation or fraudulent retainment of the money or property of the society. In absence of all these ingredients no proceedings under Section 74(1) of the Act of 1965 could have been initiated. Counsel for the respondents also failed

to satisfy the court as to how any of the charge framed can be sustained in view of requirements of Section 74(1) of the Act of 1965.

In my considered opinion impugned notice issued by the Joint Registrar, Cooperative Society, Ajmer Division, Ajmer lacks necessary foundation for initiation of proceedings under Section 74(1) of the Act of 1965 and, therefore, the notice deserves to be quashed. The same is, therefore, hereby quashed and the writ petition is allowed accordingly.

No order as to cost.

(GOVIND MATHURT),J.

kkm/ps.